

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS MACLEOD,)
Petitioner,)
v.) Civil Action No. 04-11629-PBS
DAVID NOLAN,)
Respondent.)

)

ANSWER

Pursuant to Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts, the respondent hereby answers the petition for writ of habeas corpus of the petitioner Thomas MacLeod.

1. Admitted.
2. Admitted. Answering further the respondent states that the petitioner pleaded guilty on November 1, 1999 and was sentenced nunc pro tunc as of May 17, 1999.
3. Admitted.
4. Admitted.
5. Admitted. Denied as to additional comment that plea was unknowing.
6. Denied.
7. Denied.
8. Admitted.
- 9(a)-(b). Admitted.
- 9(c). Answering further the respondent states that the citation for the Appeals Court opinion is 61

Mass. App. Ct. 1105, 808 N.E.2d 331 (2004).

9(d). Left blank by petitioner. Answering further, the respondent states that the petitioner raised the following issues on appeal: 1) the trial court erred in denying the motion for new trial where he was not afforded his constitutional right to a jury trial on the habitual offender portion of the charge; and 2) trial counsel was ineffective in coercing defendant to plead guilty and waiving his right to a fair trial.

9(e)(1)-(2). Admitted.

9(e)(3). Admitted. Answering further, the respondent states that the citation of the denial of further appellate review is 442 Mass. 1104, 810 N.E.2d 1229 (2004)

9(e)(4). Admitted.

9(f). Left blank by petitioner.

10. Admitted.

11(a)(1)-(2) Admitted.

11(a)(3). Admitted. Answering further the respondent states that the petitioner also claimed that his pre-trial report was illegally filed in his motion for new trial.

11(a)(4). Denied.

11(a)(5)-(6). Admitted.

11(b). Left blank by petitioner.

11(c). Admitted.

12. The respondent states that paragraph 12 contains legal argument and conclusions to which no response is required.

13. Left blank by petitioner.

14. The respondent lacks the knowledge or information sufficient to admit or deny the allegations

contained in paragraph 14.

15(a)-(g). Admitted.

16. Admitted.

17. The respondent lacks the knowledge or information sufficient to admit or deny the allegations contained in paragraph 17.

And further answering the respondent states that transcripts from the guilty plea colloquy and the motion for new trial hearing are included in the appendix to the petitioner's brief in the Appeals Court, which is included in the Supplemental Answer. Pursuant to Rule 5 of the Rules Governing 28 U.S.C. §2254 cases, the respondent is filing a Supplemental Answer with the following documents from the petitioner's state court proceedings:

- 1) Docket Sheets, *Commonwealth v. Thomas MacLeod*, SUCR1999-10201.
- 2) Defendant's brief, No. 03-P-1125
- 3) Defendant's Record Appendix
- 4) Commonwealth's Brief and Supplemental Appendix
- 5) *Commonwealth v. Thomas MacLeod*, 61 Mass. App. Ct. 1105, 808 N.E.2d 331 (2004).
- 6) Application for further appellate review, No. 14147
- 7) *Commonwealth v. Thomas MacLeod*, 442 Mass. 1104, 810 N.E.2d 1229 (2004)(further appellate review denied).

DEFENSES

1. The petition fails to state a claim upon which habeas corpus relief can be granted.
2. In the alternative, the state court adjudication of the petitioner's claims was not contrary to or an unreasonable application of clearly established Supreme Court law nor was it based on an unreasonable determination of the facts in light of the evidence presented in the state court.

The respondent respectfully reserves the right to amend or supplement this Answer in the future should the need arise.

Respectfully submitted,
THOMAS F. REILLY
ATTORNEY GENERAL

/s Susanne G. Reardon
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached documents was served upon
Thomas MacLeod, pro se
P.O. Box 100
S. Walpole, MA 02071

by first class mail, postage pre-paid, on August 24, 2004.

/s Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General